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IN THE HIGH COURT JUDICATURE CHHATTISGARH
AT BILASPUR

CIVIL REVISION NO 66 /2005

SINGLE BENCH

Applicant
Plaintiff

✓ Smt.Devki Bai
D/o Late Santram
Aged about 48 years.
Caste - Gond,
R/o Village - Kota,
Tahsil - Kota,
Dist : Bilaspur - (C.G.)

Versus

Non-applicants

P.R. No. 1192/05
Presented by Shri. Devki Bai
dated 24/12/05

RECEIVED-COPY
27/04/05
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- R 1. Balram Singh Gond,
S/o Santram Gond
Aged about 43 years
- R 2. Manharan Singh
S/o Santram Gond
Aged about 41 years
- R 3. Puran Singh
S/o Bhav Singh Gond
Aged about 30 years
- R 4. Smt. Hiramati
W/o Santram Gond
Aged about 63 years
- R 5. Smt. Motin Bai
W/o Bhav Singh
Aged about 63 years

Non applicants 1 to 5 are R/o
Village Bacheli Khurd, Tahsil -
Kota, Dist : Bilaspur - (C.G.)

- R 6. Chhedu
S/o Kunja Bai
Aged about 50 years
- R 7. Lakhan
S/o Kunja Bai
Aged about 40 years
- R 8. Makhan
S/o Late Smt. Kunja Bai
Aged about 30 years

Non-applicants 6 to 8 are R/o
Village Khurdur, Navapara,
Tahsil Kota, Dist : Bilaspur-(C.G.)

9. State of Chhattisgarh
Through - Collector,
Bilaspur-(C.G.)

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MEMO OF CIVIL REVISION U/S 115 OF THE CODE OF
CIVIL PROCEDURE 1908

उच्च न्यायालय, जयपुर, जयपुर

आदेश पत्रक

मासिक क्रमांक

C.R. No. 86/स

2005

विकस

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A-F-R

आदेश का दिनांक आदेश क्रमांक सहित	02-02-2007 श्री Bharat Rajput, learned counsel for the applicant. Non-applicant No.1 to 8 are absent, even though they have been served and power has been filed by counsel on their behalf. श्री Akhil Agrawal, Panel Lawyer for the State/non-applicant No.9. This Civil Revision is being disposed of finally today at the stage of admission. Brief facts are that upon dismissal of Civil Suit No.38-A/2001 vide judgment and decree dated 27-04-2001 by 4th Civil Judge Class-II, the appellant-plaintiff preferred First Appeal (Civil Appeal No.60-A/2004) on 30-06-2001. During the pendency of this appeal, respondent No.6 Kunja Bai died on 20-01-2003. An application was filed by the appellant-plaintiff on 09-09-2004 along with an application under Section-5 of the Limitation Act for bringing the legal representatives on record. It was stated therein that the appellant was a house-hold lady and was suffering from heart disease and other ailments and had no knowledge about the death of respondent No.6-Kunja Bai. The First Appellate Court took a purely technical view and held that there was no sufficient ground to condone the delay in making an application for setting aside the abatement of appeal. The matter is squarely covered by the decision rendered by the Apex Court in <u>Ram Nath Sao alias Ram Nath Sahu and Others Vs. Gobardhan Sao and Others</u> reported in (2002) 3 Supreme Court Cases 195 wherein the Apex Court held as under:-	कार्यालयीन मामलों में हिंदी रजिस्ट्रार के आदेश आदेश
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आदेश पत्रक

मामला क्रमांक C.R. No. 86/ सन् 2005

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित — 2 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	"The expression "sufficient cause" within the meaning of Section 5 of the Limitation Act, 1963 or Order 22 Rule 9 CPC or any other similar provision should receive a liberal construction so as to advance substantial justice when no negligence or inaction or want of bona fides is imputable to a party. In a particular case whether explanation furnished would constitute "sufficient cause" or not will be dependent upon facts of that case. There cannot be a straitjacket formula for accepting or rejecting explanation furnished for the delay caused in taking steps. However, Courts should not proceed with the tendency of finding fault with the cause shown and reject the petition by a slipshod order in over-jubilation of disposal drive. Acceptance of explanation furnished should be the rule and refusal, and exception, more so when no negligence or inaction or want of bona fides can be imputed to the defaulting party. On the other hand, while considering the matter the Courts should not lose sight of the fact that by not taking steps within the time prescribed a valuable right has accrued to the other party which should not be lightly defeated by condoning delay in a routine-like manner. However, by taking a pedantic and hyper-technical view of the matter the explanation furnished should not be rejected when stakes are high and/ or arguable points of facts and law are involved in the case, causing enormous loss and irreparable injury to the party against whom the lis terminates, either by default or inaction and defeating valuable right of such a party to have the decision on merits. While considering the matter, Courts have to strike a balance between resultant effects of the order it is going to pass upon the parties either way." <u>In Mithailal Dalsangar Singh and Others Vs. Annabai Devram Kini and Others</u> reported in (2003) 10 Supreme Court Cases-691, it was held by the Apex Court as under:- " The Courts have to adopt a justice-oriented approach dictated by the uppermost consideration that ordinarily a litigant ought not to be denied an opportunity of having a lis determined on merits unless he has, by gross negligence, deliberate inaction or	

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आदेश पत्रक

मामला क्रमांक C.R.No. 86/ सन् 2005

..... विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित — 3 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	something akin to misconduct, disintitiled himself from seeking the indulgence of the Court. Considering the principles laid down by the Apex Court and the facts and circumstances of the case, I am of the considered opinion that the Appellate Court grossly erred in taking a purely technical view and rejecting the application filed by the appellant-plaintiff under Order-22 Rule-4 of C.P.C. and under Section-5 of the Limitation Act. The appellant-plaintiff being a house-hold lady suffering from various serious ailments could not be expected to know about the death of respondent No.6-Kunja Bai and to take immediate prompt action to bring the legal representatives on record. In this view of the matter, a liberal approach ought to have been taken so as to advance substantial justice. In this view of the matter, this Civil Revision is allowed. An order dated 13-01-2005 passed by the VIIIth Additional District Judge (F.T.C.), Bilaspur in Civil Appeal No.60-A/2004 is set-aside. The applications under Order-22 Rule-4 of C.P.C. and under Section-5 of the Limitation Act are allowed. The appellant-plaintiff shall bring the legal representatives of deceased respondent No.6-Smt. Kunja Bai on record. The Appellate Court shall, after giving an opportunity of hearing to the parties, expeditiously dispose of the appeal thereafter. No order as to costs.	

Sd/-
Dilip Raosaheb Deshmukh
Judge

Tumane

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18-2-05